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IDAHO LEGISLATURE

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FIFTY-NINTH LEGISLATURE

TWENTY-SECOND LEGISLATIVE DAY
MONDAY, JANUARY 28, 2008

Senate Chamber

President Risch called the Senate to order at 11:30 a.m.

Roll call showed all members present except Senators Gannon, Goedde, Hammond, and Stennett, absent and formally excused by the Chair.

Prayer was offered by Chaplain Goebel.

The Pledge of Allegiance was led by Travis Nicholson, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 25, 2008, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SCR 124 **BY JUDICIARY AND RULES COMMITTEE** A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEASE-PURCHASE OF THE CORRECTIONAL ALTERNATIVE PLACEMENT PROGRAM FACILITY BY THE BOARD OF CORRECTION AND DIVISION OF PUBLIC WORKS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, Section 20-209(1), Idaho Code, provides that the State Board of Correction shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody; and

WHEREAS, Section 20-209(2), Idaho Code, provides that the State Board of Correction has authority to enter into contracts with private prison contractors for the construction and operation of a private prison facility to house Idaho prisoners; and

WHEREAS, Section 20-241A(1), Idaho Code, provides that the State Board of Correction may enter into contracts, including lease-purchase contracts, with private prison contractors to provide programs for the reformation, rehabilitation and treatment of prisoners; and

WHEREAS, the Correctional Alternative Placement Program (CAPP) is a facility designed to provide four hundred beds for Idaho prisoners, parole violators and retained jurisdiction offenders for purposes of programming, treatment, diversion and reentry; and

WHEREAS, the Legislature has previously expressed its commitment to the CAPP and wishes that the implementation of CAPP proceed without delay; and

WHEREAS, Section 67-5708, Idaho Code, provides that the Administrator of the Division of Public Works of the Department of Administration may enter into a lease-purchase or other time-purchase agreement with a party for the purchase of a facility where the Legislature has authorized such an agreement and has set a maximum cost thereof; and

WHEREAS, the State Board of Correction and Division of Public Works, after a competitive solicitation, have identified a vendor capable of building, leasing and operating a CAPP facility in Ada County, Idaho, and are prepared to enter into an agreement with Management and Training Corporation and MTC Corrections Holding, LLC for the lease-purchase of the CAPP facility; and

WHEREAS, the lease-purchase agreement will give the state control of the facility and will also give the state ownership of the real property and facility at the end of a twenty year lease-purchase period; and

WHEREAS, the lease-purchase agreement will reduce the annual costs to the state by \$433,000 per year, as compared to the cost of a straight lease of the facility, due to favorable financing options available to the vendor and federal tax provisions and will provide the state with a total cost avoidance of \$8,660,000 over the twenty year lease-purchase period as compared to a straight lease; and

WHEREAS, the annual payments under the lease-purchase agreement as set forth in the Lease Payment Schedule shall be \$2,338,774 in year one and will gradually rise to \$2,750,690 in year twenty.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-ninth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the State Board of Correction and Division of Public Works may enter into the lease-purchase agreement for the CAPP facility with Management and Training Corporation and MTC Corrections Holding, LLC, for a maximum cost of \$50,416,857 over the twenty year period of the lease-purchase agreement.

BE IT FURTHER RESOLVED that adoption of this Concurrent Resolution shall constitute the necessary approval required by Section 67-5708, Idaho Code.

SCR 124 was introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

January 28, 2008

The JUDICIARY AND RULES Committee reports out **S 1261, S 1262**, and **S 1263** with the recommendation that they do pass.

DARRINGTON, Chairman

S 1261, S 1262, and **S 1263** were filed for second reading.

Senator Stennett was recorded present at this order of business.

January 28, 2008

The STATE AFFAIRS Committee reports it has had under consideration the Gubernatorial appointment listed below and the Committee recommends that said appointment be confirmed by the Senate:

John Chatburn to the Idaho State Racing Commission, term to expire January 1, 2013.

DARRINGTON, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

January 25, 2008

Mr. President:

I transmit herewith **H 355** which has passed the House.

ALEXANDER, Chief Clerk

H 355 was filed for first reading.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President announced that **HCR 34** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator McGee, seconded by Senator Langhorst, **HCR 34** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

The Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1346

BY FINANCE COMMITTEE

AN ACT

RELATING TO APPROPRIATIONS AND TRANSFERS OF FUNDS; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE FIRE SUPPRESSION DEFICIENCY FUND; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING AN APPROPRIATION AND A TRANSFER OF FUNDS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; GRANTING A CONTINUOUS APPROPRIATION FOR THE BUREAU OF HOMELAND SECURITY'S MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 2008; AND DECLARING AN EMERGENCY.

S 1347

BY FINANCE COMMITTEE

AN ACT

RELATING TO APPROPRIATIONS TO THE DEPARTMENT OF WATER RESOURCES; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 2008; REDUCING THE APPROPRIATION TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 2008; AMENDING SECTION 2, CHAPTER 299, LAWS OF 2007, TO PROVIDE A CORRECT EFFECTIVE DATE AND TO REAPPROPRIATE UNEXPENDED AND UNENCUMBERED MONEYS TO THE OFFICE OF ENERGY RESOURCES FOR FISCAL YEAR 2009; AND DECLARING AN EMERGENCY.

S 1348

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-223, IDAHO CODE, TO PROVIDE THAT UNDER CERTAIN CONDITIONS WATER RIGHTS RELATED TO MINING, MINERAL PROCESSING OR MILLING SHALL NOT BE LOST OR FORFEITED FOR NONUSE; DECLARING AN EMERGENCY AND PROVIDING FOR APPLICABILITY.

S 1349

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO MISUSE OF PUBLIC FUNDS; AMENDING SECTION 18-5701, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE MISUSE OF PUBLIC MONEYS BY PUBLIC OFFICERS AND PUBLIC EMPLOYEES; AMENDING SECTION 18-5702, IDAHO CODE, TO PROVIDE GRADING AND PUNISHMENT FOR MISUSE OF FUNDS AND TO DELETE THE CRIME OF FAILURE TO KEEP AND PAY OVER MONEY; AMENDING SECTION 18-5703, IDAHO CODE, TO REVISE DEFINITIONS; REPEALING SECTION 18-5704, IDAHO CODE, RELATING TO FAILURE OF AN OFFICER TO ACCOUNT FOR FINES AND COSTS; AMENDING SECTION 19-403, IDAHO CODE, TO PROVIDE A STATUTE OF LIMITATIONS FOR MISUSE OF FUNDS; AND DECLARING AN EMERGENCY.

S 1350
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO THE IDAHO UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 6, TITLE 30, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR KNOWLEDGE AND FOR NOTICE, TO PROVIDE FOR THE NATURE, PURPOSE AND DURATION OF LIMITED LIABILITY COMPANIES, TO PROVIDE FOR POWERS, TO PROVIDE FOR GOVERNING LAW, TO PROVIDE FOR SUPPLEMENTAL PRINCIPLES OF LAW, TO PROVIDE FOR NAMES, TO PROVIDE FOR RESERVATION OF NAMES, TO PROVIDE FOR SCOPE, FUNCTION AND LIMITATIONS OF OPERATING AGREEMENTS, TO PROVIDE FOR THE EFFECT OF OPERATING AGREEMENTS ON LIMITED LIABILITY COMPANIES AND PERSONS BECOMING MEMBERS, TO PROVIDE FOR A PREFORMATION AGREEMENT, TO PROVIDE FOR THE EFFECT OF OPERATING AGREEMENTS ON THIRD PARTIES AND TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANIES, TO PROVIDE FOR THE DESIGNATED OFFICE AND REGISTERED AGENT, TO PROVIDE FOR CHANGE OF DESIGNATED OFFICE, TO PROVIDE FOR FORMATION OF LIMITED LIABILITY COMPANIES AND FOR CERTIFICATE OF ORGANIZATION, TO PROVIDE FOR PROFESSIONAL COMPANIES, TO PROVIDE FOR AMENDMENT OR RESTATEMENT OF CERTIFICATES OF ORGANIZATION, TO PROVIDE FOR SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO THE SECRETARY OF STATE, TO PROVIDE FOR SIGNING AND FILING PURSUANT TO JUDICIAL ORDER, TO PROVIDE FOR DELIVERY TO AND FILING OF RECORDS BY THE SECRETARY OF STATE AND FOR EFFECTIVE TIME AND DATE, TO PROVIDE FOR CORRECTING FILED RECORDS, TO PROVIDE FOR LIABILITY FOR INACCURATE INFORMATION IN FILED RECORDS, TO PROVIDE FOR CERTIFICATES OF EXISTENCE OR AUTHORIZATION, TO PROVIDE FOR ANNUAL REPORTS FOR THE SECRETARY OF STATE, TO PROVIDE FOR FILING, SERVICE AND COPYING FEES, TO PROVIDE FOR NO AGENCY POWER OF MEMBERS AS MEMBERS, TO PROVIDE FOR STATEMENTS OF AUTHORITY, TO PROVIDE FOR STATEMENTS OF DENIAL, TO PROVIDE FOR LIABILITY OF MEMBERS AND MANAGERS, TO PROVIDE FOR BECOMING A MEMBER, TO PROVIDE FOR FORMS OF CONTRIBUTION, TO PROVIDE FOR LIABILITY FOR CONTRIBUTIONS, TO PROVIDE FOR SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION, TO PROVIDE FOR LIMITATIONS ON DISTRIBUTIONS, TO PROVIDE FOR LIABILITY FOR IMPROPER DISTRIBUTIONS, TO PROVIDE FOR MANAGEMENT OF LIMITED LIABILITY COMPANIES, TO PROVIDE FOR INDEMNIFICATION AND INSURANCE, TO PROVIDE FOR STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS, TO PROVIDE FOR RIGHT OF MEMBERS, MANAGERS AND DISSOCIATED MEMBERS TO INFORMATION, TO PROVIDE FOR NATURE OF TRANSFERABLE INTEREST, TO PROVIDE FOR TRANSFER OF TRANSFERABLE INTEREST, TO PROVIDE FOR CHARGING ORDERS, TO PROVIDE FOR POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER,

TO PROVIDE FOR MEMBER'S POWER TO DISSOCIATE AND FOR WRONGFUL DISSOCIATION, TO PROVIDE FOR EVENTS CAUSING DISSOCIATION, TO PROVIDE FOR EFFECT OF PERSON'S DISSOCIATION AS MEMBER, TO PROVIDE FOR EVENTS CAUSING DISSOLUTION, TO PROVIDE FOR WINDING UP, TO PROVIDE FOR KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANIES, TO PROVIDE FOR OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANIES, TO PROVIDE GROUNDS FOR ADMINISTRATIVE DISSOLUTION AND FOR PROCEDURE AND EFFECT, TO PROVIDE FOR REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION, TO PROVIDE FOR APPEAL FROM REJECTION OF REINSTATEMENT, TO PROVIDE FOR DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANIES' ACTIVITIES, TO PROVIDE GOVERNING LAW FOR FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE APPLICATION FOR CERTIFICATE OF AUTHORITY FOR FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS FOR FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE FOR FILING CERTIFICATES OF AUTHORITY BY FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE FOR NONCOMPLYING NAMES OF FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE FOR REVOCATION OF CERTIFICATE OF AUTHORITY OF FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE FOR CANCELLATION OF CERTIFICATE OF AUTHORITY OF FOREIGN LIMITED LIABILITY COMPANIES, TO PROVIDE FOR THE EFFECT OF FAILURE TO HAVE FOREIGN LIMITED LIABILITY CERTIFICATE OF AUTHORITY, TO PROVIDE FOR ACTION BY THE ATTORNEY GENERAL, TO PROVIDE FOR DIRECT ACTION BY MEMBERS, TO PROVIDE FOR DERIVATIVE ACTIONS, TO PROVIDE FOR PROPER PLAINTIFF, TO PROVIDE FOR PLEADING, TO PROVIDE FOR SPECIAL LITIGATION COMMITTEES, TO PROVIDE FOR PROCEEDS AND EXPENSES, TO PROVIDE FOR APPLICABILITY OF THE IDAHO ENTITY TRANSACTIONS ACT, TO PROVIDE FOR RESTRICTIONS ON APPROVAL OF MERGERS, CONVERSIONS AND DOMESTICATIONS, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, TO PROVIDE A SAVINGS CLAUSE, TO PROVIDE FOR THE APPLICATION TO EXISTING RELATIONSHIPS; AMENDING SECTION 30-1-401, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 63-3004A, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 63-3622, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; REPEALING CHAPTER 6, TITLE 53, IDAHO CODE, RELATING TO THE IDAHO LIMITED LIABILITY COMPANY ACT; AND PROVIDING EFFECTIVE DATES.

S 1351
BY STATE AFFAIRS COMMITTEE
 AN ACT

RELATING TO THE RETAIL SALE OF LIQUOR; AMENDING SECTION 23-902, IDAHO CODE, TO DEFINE "EVENTS CENTER"; AMENDING SECTION 23-944, IDAHO CODE, TO

PROVIDE THAT CERTAIN PERSONS UNDER THE AGE OF TWENTY-ONE YEARS MAY LAWFULLY ENTER OR BE IN EVENTS CENTERS LICENSED FOR THE SALE OF LIQUOR, WINE OR BEER OR WHERE SUCH PRODUCTS ARE DISPENSED, SERVED AND CONSUMED; AND AMENDING SECTION 23-217, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

S 1346, S 1347, S 1348, S 1349, S 1350, and S 1351 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 355, by State Affairs Committee, was introduced, read the first time at length, and referred to the Transportation Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

S 1305, by Agricultural Committee, was read the second time at length and filed for third reading.

H 373 and H 374, by Appropriations Committee, were read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

S 1276 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Corder arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst, Lodge, McGee, McKenzie, Richardson, Sagness (Malepeai), Schroeder, Stegner, Stennett, Werk. Total - 27.

NAYS--Geddes, Little, McKague, Pearce, Siddoway, Total -5.

Absent and excused--Gannon, Goedde, Hammond. Total - 3.

Total - 35.

Whereupon the President declared **S 1276** passed, title was approved, and the bill ordered transmitted to the House.

S 1246 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Richardson arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, McGee, McKague, McKenzie, Pearce, Richardson, Sagness (Malepeai), Schroeder, Siddoway, Stegner, Stennett, Werk. Total - 32.

NAYS--None.

Absent and excused--Gannon, Goedde, Hammond. Total - 3.

Total - 35.

Whereupon the President declared **S 1246** passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:03 p.m. until the hour of 10:30 a.m., Tuesday, January 29, 2008.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary